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HUMAN RIGHTS COMMITTEE

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SUMMARY RECORD OF THE 1765th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 19 July 1999, at 3 p.m.

Chairperson: Ms. MEDINA QUIROGA

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Fourth periodic report of Poland (continued) (CCPR/C/95/Add.8)

1. Ms. EVATT said she had found paragraph 34 of the report (CCPR/C/95/Add.8) dealing with women's issues somewhat disappointing. She inquired about the scope of legislation prohibiting discrimination against women in employment in the private sector. Were remedies available in cases of sexual harassment? She understood that restrictive laws still existed under which women were prevented from fully exercising their right to employment. There was also the issue of different retirement ages for men and women entailing a reduced pension for women. Was it true that fewer women currently held political office than in the past?
2. With regard to domestic violence, she asked whether there was legislation in Poland under which women could go to court to seek a protective order restricting the movement and activities of a person such as a husband or partner who had perpetrated violence against her. Was it true that a request by the victim was required in order to institute legal proceedings in cases of rape?
3. There had reportedly been an increase in trafficking in women to, from and through Poland. She asked whether, following the visit to the country by the Special Rapporteur of the Commission on Human Rights on violence against women, its causes and consequences, legislation addressing that offence had been enacted and, if so, to what extent it had been invoked to prosecute offenders and protect victims.
4. Was it true that a married couple must assume the family name of the husband, unless a declaration to the contrary was made at the time of marriage, and that children, even in the case of an unmarried couple, could only take the father's name?
5. The grounds for divorce seemed to permit courts to turn down applications where they were not convinced that a marriage had irrevocably broken down or where they felt that the interests of the children required that the partners should remain together. To what extent had applications for divorce been refused on those grounds?
6. She shared the view of other Committee members that restrictions on abortions, withdrawal of financial support for contraception and the removal of sex education from school curricula could jeopardize the health and even the lives of women.
7. She submitted that the denial of permission to hold the Gay Pride Festival in Warsaw in 1998 indicated that there was some measure of discrimination against homosexuals in Poland.
8. She asked what provision was made to ensure that persons expelled or deported as illegal immigrants were not returned to a country where they might

be at risk of a violation of article 7 or other provisions of the Covenant. What steps had been taken to ensure that the non-refoulement law complied with international standards?

9. Mr. AMOR welcomed the progress that had been made in human rights in Poland since the end of the former regime. He had not yet fully understood to what extent the Covenant took precedence over Polish domestic law. According to article 91 (1) of the Constitution, ratified international treaties constituted part of the domestic legal order and were applied directly unless their application depended on the enactment of a statute. He asked for clarification of the last clause.

10. He associated himself with other members' comments on the virtual impossibility of securing a legal abortion in Poland and the difficulty of obtaining access to contraceptive methods and devices. The official figure for abortions obviously did not reflect the real situation. He understood that religion and tradition weighed heavily on women when it came to making reproductive choices.

11. He asked whether the restriction placed on rights under article 56 of the Constitution by article 79 (2) was applicable to all foreigners. In other words, were foreigners whose papers were not in order deprived of certain procedural guarantees to which they were entitled under the Covenant?

12. Mr. POCAR said he was impressed by Poland's achievement in recent years, including the drafting of a new Constitution. He associated himself with the comments by other members on the status of the Covenant, gender equality, the status of foreigners and the issue of refoulement.

13. He would welcome more details about the regime of accountability of public officials. Article 2, paragraph 3, of the Covenant did not necessarily require personal accountability where a violation was committed by a person acting in an official capacity; in some cases, State liability sufficed. But rights and freedoms were obviously better protected where officials were held personally accountable for their acts and could not hope to enjoy impunity. He referred not only to serious offences entailing criminal responsibility but also to minor civil or administrative abuses of authority.

14. Mr. SOLARI YRIGOYEN welcomed the action taken in recent years to build a democratic system in Poland that was diametrically opposed to the previous system of government. In the light of the admission in paragraph 34 of the report that men held more high-level posts than women, he asked what proportion of seats in the two chambers of parliament were held by women and what steps were being taken to redress any imbalance.

15. According to reports from reliable NGOs, members of the police and armed forces in Poland had failed to comply fully with the provisions of article 7. He wished to know whether torture and cruel, inhuman or degrading treatment or punishment were recognized as offences punishable by law under the amended Penal Code of 1997 and, if so, what penalties were prescribed for such offences.

16. There had also been reports of physical and verbal ill-treatment of pupils by certain teachers. He inquired about the scale of the problem and asked how it was being addressed by the authorities.

17. Lastly, he wished to know how the Polish authorities reconciled the practices of interception of correspondence and surveillance of private citizens with the provisions of article 17 of the Covenant.

18. Ms. KOWALSKA (Poland) said that the number of abortions in Poland had obviously been underestimated but it was difficult to obtain realistic figures. On the other hand, the figures had not been high even when abortion had been freely available in Poland: about 50 per cent, or one abortion for every two live births. The use of modern contraceptives partly accounted for the recent decline in the ratio. The authorities were aware that abortions were obtained abroad and that illegal abortions were performed, sometimes under unsafe conditions, but there were few figures for ensuing medical complications. Although women in difficult social and economic conditions might be deprived of the right to abort, they were offered financial support and access to shelters and hostels. The Commissioner of Citizens' Rights (Ombudsman) had received no complaints concerning denial of reproductive rights or the refusal by doctors to perform abortions. On the other hand, a number of women who had been accorded the right to abort because of serious and irreversible damage to the foetus had decided to give birth to a disabled child.

19. A woman did not automatically assume her husband's family name if she made no declaration at the time of marriage. She was perfectly entitled to keep her maiden name.

20. There were structural differences in the Polish labour market. A large proportion of women were employed in such non-productive branches as health services and education, where wages were low for both sexes. Men who held managerial posts often earned higher salaries but it was difficult to establish whether the duties of women occupying similar posts were such as to warrant equal pay.

21. The Ombudsman had received a number of complaints regarding inequalities between men and women during the period from 1988 to 1999. In the case of complaints concerning access to contraceptive methods and devices, the most common barrier was financial. The Ombudsman had written to the Ministry of Health about the problem but no positive response had been received as yet. Another topic was the right of women to study in the all-male army universities. It had previously been argued that social conditions in the universities were inappropriate for women but that argument no longer held sway and a favourable outcome was expected in the near future. More than 300,000 petitions had been received by the Ombudsman in the period under review, including some 40,000 in 1998. Most of them concerned labour law, social insurance, business matters, taxes, administration, justice and prosecution agencies. In response to the petitions, over 130,000 messages had been sent to ministries, institutions and agencies urging them to address the issues raised.

22. There had been cases of violence in schools but they were not covered by laws relating to education and cases of prosecution of teachers were rare. However, the educational reforms that were to come into effect on 1 September 1999 would address the problem, for example through the establishment of a parents' council in each school.

23. Mr. STRUMINSKI (Poland) said that the new legislation on pensions introduced in December 1998 did not really discriminate against women. Although the normal retirement age was 65 for men and 60 for women, there was nothing to prevent women from continuing to work until 65 if they so wished. The statutory difference was intended to reflect differences between the sexes in terms of the procreative and nurturing functions performed by women. Men in some occupations, for example lorry drivers, also enjoyed protection for biological reasons in the form of minimum working hours. There had been no official survey of public opinion on the pension system. However, the parliament had been widely consulted and it was generally accepted that between 70 and 75 per cent of women preferred the new system.

24. It could not be denied that, in general, women earned less than men in Poland. The reasons were simple: most women preferred to work shorter hours, or not to work at all, in order to devote more time to their family. On the other hand, some Polish businesswomen undoubtedly earned higher salaries than their husbands. There was no discrimination against women who worked the same hours as men and maintained the same level of productivity.

25. He confirmed having seen in the national and regional press job advertisements for female employees who were not pregnant. However, that was the exception rather than the rule and thus not a major concern. In any case what was the solution? Any attempt to place restrictions on job advertisements would be an infringement of the right to freedom of expression. There were equal employment opportunities for men and women.

26. It was illegal to refuse women employment in connection with maternity leave. Complaints on that score could be addressed to the labour courts or the Commissioner of Citizens' Rights (Ombudsman). Likewise, it was against the law to refuse employment on the grounds of sexual orientation. In practice, homosexuals sometimes encountered problems in that regard, but the situation was improving year by year.

27. Mr. LEWANDOWSKI (Poland), wishing to clarify a number of issues raised by the Committee, drew attention to article 37 of the Polish Constitution, according to which foreigners basically enjoyed the same freedoms and guarantees as Polish nationals, subject to exceptions defined by law. Furthermore, foreigners were afforded the additional protection of political asylum and refugee status under article 56 of the Constitution. They could not file a constitutional complaint with regard to those matters; in accordance with article 79 (z), however, there was nothing to prevent them lodging complaints relating to other issues.

28. The principle of non-refoulement was enshrined in Polish legislation. Poland had ratified the Convention relating to the Status of Refugees in 1991 and had made the necessary amendments to its Aliens Act. The wording of Article 53 of the amended Act reflected that of article 33 of the Convention

and provided the same guarantees as article 7 of the Covenant and article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

29. Earlier he had mentioned the fact that article 13 of the Covenant did not cover people held in refugee centres; it applied only to people lawfully present in the territory of the contracting parties. However, under Polish legislation, both legal and illegal immigrants were guaranteed due process; even when held in detention for 48 hours, they were entitled to file a complaint and thereby ensure that the lawfulness of the detention order was investigated.

30. He could not provide accurate figures on the number of people returning to Poland under the Polish-German readmission agreement. He reckoned that approximately 50 per cent of returnees were transferred to other countries, including Lithuania and Ukraine; 5 to 10 per cent (usually from Afghanistan and Sri Lanka) remained in Poland on grounds of non-refoulement; the rest could apply for refugee status.

31. There was no differentiation between the sexes in examining applications for Polish citizenship, as was borne out by article 10 of the Polish Nationality Act, which referred to "the foreigner contracting marriage with a person holding Polish nationality".

32. One of the principles underlying the Constitution was that any Polish citizen could return to Poland. The repatriation programme referred to by some Committee members applied to people of Polish origin who, for some historical reason, had so far been denied the opportunity to return to Poland and to apply for citizenship (i.e. people from the former Soviet Union).

33. Mr. LAPTAS (Poland), replying to questions concerning the execution of penalties and the treatment of convicted and unconvicted prisoners, drew attention to article 40 of the Constitution, which prohibited ill-treatment. That principle, as well as the principle of due respect for human dignity, was enshrined in the new Punishment Execution Code, which law enforcement officers were obliged to comply with. Violations of the Code constituted offences carrying a penalty of three to five years' imprisonment.

34. Conditions in Polish prisons were not good, mainly because the buildings were old and badly in need of repair. It was essential to provide adequate living space for prisoners and to improve their general conditions by ensuring that they had access to certain facilities (television, radio, computer) and to recreational activities. In 1994, the Central Prison Service had launched an investment and modernization programme for prisons, to be completed by the year 2000.

35. In 1998, 8,786 complaints had been filed against prison authorities, and in 265 cases the complaints had been found to be justified. The statistics he was referring to had been provided by the Central Prison Service and came from a number of sources. Prisoners could address their complaints either directly to the prison authorities or to members of parliament, NGOs, public prosecutors and the Ombudsman, who would forward them to the Central Prison Service for investigation.

36. With regard to complaints about police behaviour, between January 1995 and December 1998 a total of 2,639 criminal cases had been brought before the courts. For instance, there had been 35 complaints about the unlawful use of firearms involving 32 police officers; they had resulted in three convictions. During the same reporting period it had been found necessary to take disciplinary measures in 1,685 cases, resulting in the imposition of penalties and numerous dismissals.

37. Ms. ZIORKIEWICZ (Poland), replying to queries regarding legislation on rape, confirmed that, under the new Penal Code the penalty for rape had been reduced by comparison with the 1969 Code. That was in line with the general trend towards the liberalization of punishment in Poland. Nonetheless, under the new Code, rape was still considered as one of the most serious crimes and carried a penalty of up to 12 years' imprisonment. If the Committee was not satisfied with that answer, she could provide further written information on the subject in due course.

38. There were no obstacles to Poland's ratification of the Second Optional Protocol to the Covenant since capital punishment was not permitted under Polish criminal law, even during wartime. However, as the ratification procedures had not yet got under way, for the reasons outlined earlier by her delegation, she was not in a position to say whether Poland was likely to make any reservations to the Protocol.

39. Ms. JANISZEWSKA (Poland), providing additional information on the status of the Covenant vis-à-vis Polish legislation, said that pursuant to article 91 (1) of the Constitution, international agreements ratified by Poland and published in the Journal of Laws formed part of domestic legislation and could be applied in the courts. However, when the international laws in question were not self-executing, Poland was compelled to introduce new legislation, as also provided for under article 91, of the Constitution. Since, for the most part, the provisions of international agreements could be applied directly in the Polish courts, there was rarely a need for new legislation. It was worth noting that the Constitution referred to international agreements only and not to customary law. Furthermore, in Poland, international agreements took precedence over domestic law in the event of a discrepancy between the two.

40. Responding to queries about conditions in institutions for young offenders, she said that, since the submission of the report, new legislation had been enacted with a view to reorganizing and improving living conditions in such institutions. A distinction was now drawn between correctional institutions for convicted offenders and youth shelters, where young people were detained for the duration of court proceedings. A number of guarantees were provided by the new legislation, including the right to decent living conditions, due respect for human dignity, the right to contact one's family, freedom of correspondence, the right to lodge complaints against the officials running such institutions and the right to bring proceedings against them.

41. The Government had also taken a number of steps to facilitate the implementation of legislation, such as reducing the number of youths housed in such institutions and disseminating information on their rights.

42. Ms. JANISZEWSKA (Poland), in reply to question 3 of the list of issues, said that the provisions of chapter XI of the Constitution governed measures to be taken in a state of emergency, and since 1980 no new measures had been introduced. In reply to question 4, she recalled that the Committee had reviewed only one case alleging a human rights violation in Poland and had eventually decided that no violation had occurred. In the light of that situation, there seemed to be no grounds for adopting enabling legislation to incorporate decisions of the Committee into the national legal order. The Committee's Views had been debated in the Polish parliament's Commission of Administration, which had found no reason to change existing law in that particular respect. On the other hand, the European Court of Human Rights had ruled against Poland in several cases that had been brought before it, and there was thus need to devise a procedure for amending the law to take account of those rulings.

43. In response to questions 9 and 10, she said that in 1995 changes had been introduced in the law governing pre-trial detention. The system whereby a person charged with a criminal offence was automatically placed in detention had now been abolished. Since June 1996, orders for such detention and for the extension of its duration could only be issued by the courts. The length of pre-trial detention could not exceed two years.

44. Ms. ZIORKIEWICZ (Poland), in response to question 15 (a), said that under article 10 (1) of the new Constitution, which had entered into force in 1997, a clear distinction was drawn between the powers of the Executive and the powers of the Judiciary. Under article 45, the principle of the independence and impartiality of the Judiciary was established. That article laid down that judges should be fully independent and subject only to the Constitution and the law, and that they could be appointed only by the President of Poland on the recommendation of the National Council of the Judiciary; their term of office was indefinite. Judges could only be dismissed, or moved to a different area of jurisdiction, on the basis of a court decision. They were entitled to conditions of employment and to salaries commensurate with their position. Restrictions were placed only on those of their rights considered incompatible with the independence of the Judiciary, notably the right to join political parties or trade unions.

45. In response to question 15 (b), she said that on 6 June 1997 a new Code of Criminal Procedure had been adopted; it had entered into force on 1 September 1998, replacing the Code of 1969. That marked the end of an extensive process of reform of Polish criminal law, bringing it into line with the needs of a modern democratic State. The changes made were of great importance in the context of article 14 of the Covenant. Thus, in relation to article 14, paragraph 1, only the court could decide to deprive a person of liberty, and only the judge, not the prosecutor, could decide to put a suspect under psychiatric observation. Decisions taken by the prosecutor in the course of pre-trial proceedings could now be appealed to the court, and telephone conversations could be tapped only following a court order.

46. In regard to article 14, paragraph 2, under the new Code the suspect was presumed innocent. Regarding article 14, paragraph 3, a suspect was now entitled to be informed of his rights before being questioned, including the right to contact a solicitor and to be questioned in the solicitor's presence.

The new Code had also enlarged the scope of the so-called "obligatory defence" to cover cases where the accused did not speak Polish and also cases where the judge considered that circumstances required it.

47. Replying to question 15 (c), concerning the time taken to complete criminal and civil proceedings, she said that in the district criminal courts average times had been 4.3 months in 1995, 4.8 months in 1996 and 5.1 months in 1997. In Warsaw criminal courts acting as courts of first instance, average times had been 7.1 months in 1995 and 1996 and 8 months in 1997. In Warsaw criminal courts acting as courts of second instance, the averages had been 1.4 months in 1995, 1.5 months in 1996, and 1.7 months in 1997. In civil cases in the district courts, the average time had been 4.4 months in 1995, 4.3 months in 1996 and 5.4 months in 1997. In family cases in the same courts the averages had been 2.5 months in 1995 and 1996, and 2.6 months in 1997. In civil cases in Warsaw courts acting as courts of first instance, the average time had been 9.3 months in 1995, 9.6 months in 1996, and 7.8 months in 1997; in Warsaw courts acting as courts of second instance, the averages had been 1 month in 1995, 1.3 months in 1996 and 1.6 months in 1997.

48. Replying to question 15 (e) on availability and quality of legal aid, she said that in criminal cases accused persons could only be represented by solicitors, whose qualifications must include a degree in law, an apprenticeship of 3 years and 6 months, and success in a final qualifying examination. The number of solicitors had increased over the past few years from 6,900 in 1990 to 7,260 in 1997. Accused persons could also be represented before the courts by counsellors in all cases except criminal and family cases. Counsellors must fulfil the same requirements as solicitors.

49. Mr. KRASNODEBSKI (Poland), replying to question 16, said that procedures for tapping private telephones, including the eventual destruction of recordings made, were regulated by the Ministry of the Interior in coordination with other ministries. The principle of the right to privacy was laid down in article 49 of the Constitution, and violation of that right was punishable under article 267 of the Penal Code. Tapping was only authorized in certain circumstances defined by law. It could be used by the police in pre-trial proceedings, provided that the objective was to prevent, or to discover, a serious crime. Serious crimes included crimes against the person, illegal trade, illegal possession of weapons, bribery of public officials and counterfeiting. Tapping could only be extended for a certain period, after which a second application for authorization had to be made. Information on citizens gained by clandestine police operations could only be made available to the court at the request of the prosecutor, and only in criminal proceedings.

50. Mr. LEWANDOWSKI (Poland), in response to the questions in paragraph 18 on the exercise of religious freedom, said that under article 53 of the Constitution all persons on Polish territory were guaranteed freedom of expression and freedom of worship. Everyone had the right to belong to the Church or religious association of his choice. Registration did not imply the legalization of any particular religion: it was rather intended to give legal personality to the Church or association in question in order to enable it, for instance, to contract obligations.

51. Under article 25 of the Constitution, all Polish Churches were equal, but some operated on a different legal basis from others. Thus, the Catholic Church was regulated by an international concordat, while the relationship of the State with other Churches and with religious associations was regulated by Polish law. Under article 36 of the Constitution, the public prosecutor could require investigations to be carried out into the legality of a Church or association. If the court ruled that the activities of such a body were illegal, its name must be deleted from the register.

52. Ms. DABROWIECKA (Poland), in response to question 19, said Polish press law did not impose any restrictions on the registration of newspapers and magazines: in her view, the requirement that applications for registration must be made to a court could not be said to constitute a restriction. Applications were only rejected if, for instance, they failed to supply the name of an editor and the address of a publishing office, or if they infringed copyright. If the court failed to deal with the application within a period of 40 days, the applicant was entitled to commence publication.

53. The Radio Broadcasting and Television Act required that programmes should respect the religious beliefs of their listeners, especially Christian values. The word "especially", while reflecting the special place of Christian culture and tradition in Polish society, was intended only as an example. In 1994 the Constitutional Court had ruled that that requirement did not in fact amount to censorship. It had also ruled that the requirement that Christian values should be respected did not imply any obligation to propagate them.

54. Polish laws prohibiting the defamation of public authorities had often been criticized as an infringement of the right to free speech. Under the new Penal Code, sentences for that offence had been reduced from 8 to 2 years, and only defamation of the President or of the constitutional organs of the Republic was now considered punishable. Between 1990 and 1996, only 12 persons had been sentenced for the offence. Even under the old Code, the Supreme Court had ruled that the law could not be interpreted as limiting rights defined under international instruments.

55. Ms. KOWALSKA, replying to question 21, said that a new bill setting up the long-awaited Ombudsman for Children's Rights had recently been introduced. It was hoped that the Ombudsman would begin work 1 January 2000.

56. Ms. DABROWIECKA (Poland), said that under article 60 of the Constitution access to public service in Poland was guaranteed for all. There were no requirements for entering the service based on political affiliation or gender, which would be contrary to the law; candidates were only required to be Polish citizens with no criminal record and to be of high moral standing. Poles had the right to vote from the age of 18 and the right to stand for election from the age of 21.

57. Replying to question 23, she said that the new Constitution guaranteed equal treatment for all by the public authorities and prohibited discrimination of any kind. Similar provisions were also included in specific laws, such as the Law on Freedom of Conscience, the Labour Code and the Law on Education. The new Penal Code specifically prohibited acts of violence or

threats against persons belonging to minority groups or holding minority political views, and also outlawed all forms of hate propaganda on grounds of ethnicity or race. Sixteen persons had been sentenced for ethnically-motivated crimes between 1992 and 1994 compared with 4 and 3, respectively in 1995 and 1996, and pre-trial proceedings in 15 such cases had been reported for 1998. Prejudice-related crimes, whose overall number was minimal, were strongly condemned by public opinion, the media and the public authorities. Further details were to be found in Poland's August 1997 report to the Committee on the Elimination of Racial Discrimination.

58. Mr. LEWANDOWSKI (Poland), replying to question 24, said that Poland did not keep statistics on citizens who declared themselves to be members of a national minority; the figures he could supply were therefore based on estimates by the Parliamentary Commission for Minority Affairs. At present, there were between 900,000 and 1,095,000 Polish citizens, or 2.3 to 2.9 per cent of the population, who considered themselves to be members of national minorities. That total included between 350,000 and 450,000 Germans, 250,000 to 300,000 Ukrainians and Wends, 250,000 to 300,000 Ruthenians, 20,000 to 25,000 Roma, 15,000 to 20,000 Lithuanians, 10,000 to 15,000 Slovaks and 8,000 to 10,000 Jews. There were also between 2,000 and 3,000 Czechs, 8,000 Armenians, 2,000 Tatars and about 5,000 Greeks and Macedonians. All those minorities had the right to their own educational and cultural institutions and organizations for the preservation of their religious identity, as well as the right to participate in the decision-making process concerning their cultural identity. They currently had about 220 organizations, including local branches, and published a large number of newspapers, many of which were subsidized by the Ministry of Culture. It should be noted that the 5 per cent rule in the Electoral Law could be derogated from in the case of minority candidates. At present there were two members of parliament representing the German minority, as well as several others belonging to ethnic minorities who represented different political parties. All the above rules applied equally to the Roma, and a special educational programme for children belonging to that minority had been in operation since 1992.

59. Ms. JANISZEWSKA (Poland), replying to the first part of question 25, said that the text of Poland's third periodic report had been issued by the Ministry of Justice in the form of a general publication, including a summary of the proceedings before the Human Rights Committee; the same procedure would be followed in respect of the present report. The Committee's recommendations had been forwarded for action to the appropriate ministries and other bodies. Replying to the second part of the question, she said that human rights subjects were being increasingly included in educational syllabuses. Regular courses on human rights were provided at universities and in vocational training and special courses on human rights were given to groups of public officials, judges, Ministry of Justice staff and police cadets. By a decision taken in December 1998, the Chief of Police had appointed a special official to take charge of the incorporation of human rights subjects in the training of police and prison officers, including medical personnel.

60. The CHAIRPERSON invited members to ask additional questions on the second part of the list of issues; because of the shortage of time, the delegation could, if it so wished, provide its answers in writing by midday on 23 July.

61. Mr. BHAGWATI expressed appreciation of the steps taken to strengthen human rights in Poland since the consideration of the (third) periodic report, and remarked that it would have been of considerable help to the Committee if information in the report under consideration had been updated in writing. In particular, if a citizen wanted to challenge a domestic law on the grounds of its inconsistency with the Covenant, could he now approach the Constitutional Court directly? If not, what other court was competent to deal with such matters?

62. Noting that, according to paragraph 37 of the report, the State of Emergency Act of 5 December 1983 still remained in force, he asked whether the Act contained any provisions which derogated from any right under the Covenant.

63. With regard to the composition of the Judiciary, he asked whether judges appointed under the old regime had been replaced and, if some of them remained in office, what steps had been taken to reorient their attitude towards human rights. Information concerning the appointment of judges provided in the core document (HRI/CORE/1/Add.25/Rev.1) differed considerably from that in the fourth report, possibly because of changes which had taken place in the meantime. What was the composition of the National Council of the Judiciary? And what was the basis for the Council's recommendations concerning the appointment of judges to the President? Were those recommendations binding on the President? What authority could hold inquiries into any misconduct by judges with a view to their removal? What disciplinary proceedings could be taken in such a case? And how many judges had been removed during the past few years as a result of a disciplinary inquiry?

64. Referring to the question of conscientious objection (Covenant, art. 18), he said that, according to information received from NGOs, the draft law amending the present law on military service, already adopted by the Diet and currently before the Senate, reduced the length of alternative service from 24 to 21 months and that of military service from 18 to 12 months. The striking disproportion between the two sets of figures suggested that conscientious objectors were being punished for their views, which would be contrary to resolutions of the Commission on Human Rights and the European Parliament. What steps were being taken to amend the draft law in that respect? Furthermore, he understood that applications for alternative service must be made before receiving call-up papers. Since conscientious objection could arise at any time, including during military service, that part of the law, too, should be amended.

65. With regard to article 14, he said that according to NGO reports, the fact that litigants lived a long way from the nearest court in some parts of Poland, as well as lack of courtrooms in many places, rendered access to the courts very difficult and accounted for serious delays in judicial proceedings. He had been pleased to hear from the delegation that the length

of proceedings had been substantially reduced, but wondered what steps had been taken to improve the court infrastructure. Lastly, he asked for information on arrangements for free legal aid to needy persons.

66. Ms. CHANET, referring to article 9, noted that an arrested person could be held in police custody for 48 hours. Before what judge were such persons brought at the end of that period? And were they held incommunicado during the period or could they have contacts with the outside world, including with a lawyer and, if necessary, a doctor? She gathered that if, at the end of the 48 hours, a judge decided to place the arrested person in pre-trial detention, such detention could not last longer than two years. But what if the eventual sentence was for less than two years? Were there any possibilities of periodic review for pre-trial detainees? The Committee would need to see the text of the new Code of Criminal Procedure.

67. She was concerned to note that the Constitution contained no provision for rights under article 14 of the Covenant except for the presumption of innocence. Noting that article 184 of the Constitution contained a provision concerning the removal of judges, she asked who was the judge that judged other judges. Referring to information just given by a member of the delegation concerning the length of judicial proceedings, she remarked that it was strikingly inconsistent with figures appearing in NGO reports, and asked for further explanations. Lastly, referring to article 18, she noted that all the Churches reported to have established a relationship with the Polish State were Christian ones, and asked for information about the status of non-Christian religions and, especially, the Jewish faith.

68. Mr. AMOR, also referring to article 18, asked whether and to what extent the Polish State was influenced by the Roman Catholic religion, especially regarding the status of women, contraception and abortion. Noting that Churches and religious associations in Poland could be charged with involvement in illegal activities, he asked whether any Polish court had had occasion to define the meaning of the concept of religion. Did it apply to all creeds without exception, including new religious movements? With regard to the rights of conscientious objectors, he associated himself with Mr. Bhagwati's comment that the draft law providing for 21 months of alternative service as against 12 months of military service appeared to have a punitive character.

69. Mr. ZAKHIA asked for figures showing recent developments with regard to the representation of women in government, the liberal professions, universities, etc. Had any quotas been introduced in that respect? He would also appreciate information about any measures adopted to protect women, in particular against the white-slave trade in or through Polish territory. Lastly, he asked whether equality of rights existed between children born in and out of wedlock.

70. Mr. POCAR, recalling that the third periodic report had indicated that Polish military courts would in future try only military offences, asked whether that change had in fact taken place. On the question of minorities, he noted that reference had been made only to national or ethnic minorities but not to linguistic or religious ones. He would appreciate more information about the protection of linguistic and religious minorities as such, and in

that connection drew the delegation's attention to the Committee's general comment 23 on article 27, and in particular paragraph 5 (2) of the general comment.

71. The CHAIRPERSON thanked the Polish delegation and expressed the hope that its replies in writing to the additional questions would be submitted in due course.

72. Mr. BORUSEWICZ (Poland) thanked members for their interest and promised that all their comments would receive the necessary attention from his Government, which was eager to cooperate closely with the Committee and with all NGOs active in the field of human rights.

The meeting rose at 6.15 p.m.